

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SUZANNE FIORE,

Plaintiff,

-v-

ANDREW PINTO ET AL.,

Defendants.
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MEMORANDUM DECISION
AND ORDER
09 Civ. 2465 (GBD)(GAY)

GEORGE B. DANIELS, United States District Judge:

On March 18, 2009, Plaintiff Suzanne Fiore initiated this action alleging that Defendants falsely arrested her and retaliated against her because of her speech. Judge Stephen Robinson referred the case to Magistrate Judge Yanthis for all purposes. After Plaintiff failed to serve Defendants within 120 days after filing the complaint and failed to respond to Magistrate Judge Yanthis' Order to Show Cause, Magistrate Judge issued a Report & Recommendation ("Report") recommending that this Court dismiss the case pursuant to Fed. R. Civ. P. 4(m).

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a de novo determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(c). It is not required, however, that the Court conduct a de novo hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v.

Smith, 618 F.Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if “there is no clear error on the face of the record.” Adee Motor Cars, LLC v. Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citation omitted).

In his Report, Magistrate Judge Yanthis advised Petitioner that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Plaintiff failed to file timely objections.


Magistrate Judge Yanthis properly recommended that the case be dismissed under Rule 4(m). Rule 4(m) allows a Court, on its own motion after notice, to dismiss an action if the defendant has not been served within 120 days after the complaint has been filed. Fed. R. Civ. P. 4(m). Magistrate Judge Yanthis provided such notice when he issued an Order to Show Cause on June 17, 2010. See Thompson v. Maldonado, 309 F.3d 107, 110 (2d Cir. 2002). Because Plaintiff failed to serve Defendants within 120 days of filing her Complaint, failed to respond to Magistrate Judge Yanthis’ Order to Show Cause, and otherwise failed to appear in this action, this Court dismisses Plaintiff’s complaint without prejudice.

Conclusion

The Court adopts the Report and Recommendation. Plaintiff's complaint is dismissed without prejudice.

Dated: November 15, 2010
New York, New York

SO ORDERED:



GEORGE B. DANIELS
United States District Judge